

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 08 March 2006

Case No.: 2001-STA-60

In the Matter of

WILLIAM O. KIRKPATRICK

Complainant

v.

ACTION STEEL SUPPLY, INC.

Respondent

BEFORE: RUDOLF L. JANSEN
Administrative Law Judge

RECOMMENDED DECISION AND ORDER
DISMISSING COMPLAINT

The above action arises under the Surface Transportation Assistance Act of 1982 (STAA) (49 U.S.C. § 2305), and implementing regulations at 29 C.F.R. § 1978, based upon a complaint filed by William O. Kirkpatrick on April 16, 2001. A Notice of Hearing was issued on October 9, 2001, scheduling this matter for hearing in Indianapolis, Indiana on January 15, 2002.

Counsel for the Respondent reported on January 9, 2002 that Action Steel Supply, Inc. had filed a voluntary petition in bankruptcy seeking protection of the United States Bankruptcy Court. Matters arising under the STAA have been held by the Secretary of Labor to be subject to the automatic stay provisions of the Bankruptcy Act. Nelson v. Walker Freight Lines, Inc., Case No. 87-STA-24, Sec. Dec. and Order, July 26, 1998; Torres v. Transcon Freight Lines, Case No. 90-STA-90, Sec. Ord., January 30, 1991; Thomas et. Al. v. Western American Concrete, Case No. 90-STA-16, Sec. Dec. and Order Staying Proceedings and Remanding Case, April 8, 1991.

On January 10, 2002, an Order was issued requiring the Assistant Secretary of Labor for Occupational Safety and Health to advise whether he had intervened or intended to intervene in the prosecution of the complaint filed by Mr. Kirkpatrick. Janet M. Graney, Counsel for Civil Rights on behalf of the Assistant Secretary, responded on January 18, 2002 that the Assistant Secretary had not intervened and did not intend to intervene in the prosecution of this matter. Consequently, an Order was issued staying any further action on the complaint until final disposition of Respondent's bankruptcy. 11 U.S.C. § 362(a)(1); Torres v. Transcon Freight Lines, Case No. 90-STA-90, Sec. Ord., January 30, 1991.

By letter dated February 10, 2006, Respondent's Counsel advised that the Debtor's Official Unsecured Creditors' Committee had proposed a Plan of Liquidation. The Plan, which was approved by the Court, set aside a pool of funds for distribution to unsecured creditors. Mr. Kirkpatrick, through counsel, reached a settlement with the Committee whereby his claim would be allowed in the amount of \$ 29,601. However, as an unsecured creditor, Mr. Kirkpatrick received a Court approved distribution of \$571.00 which was paid in full satisfaction of the claim.

In response to a recent Show Cause Order, both the Complainant and counsel for the Respondent have advised the Court as to the current status of this matter. By letter dated February 19, 2006, William O. Kirkpatrick indicates that his attorney has now passed away and that it is not his intention to retain another one. He states that he did receive approximately \$504.00 from the Respondent in the bankruptcy proceeding as a result of the allowance of his unsecured claim. He states that from his viewpoint, this is the end of this case and that it is up to the federal government to pursue this matter to any further degree. Jeffrey J. Graham, who is the new counsel for the Respondent, states that it is his understanding that Mr. Kirkpatrick's receipt of a partial distribution in satisfaction of his claim in the bankruptcy proceeding resolved his claim.

On March 3, 2006, I received from the Office of the Clerk, U.S. Bankruptcy Court, Indianapolis, Indiana, a copy of an Order confirming Amended Plan. The Order indicates that the Amended Plan under Chapter 11 of the Bankruptcy Code filed by the Official Committee of Unsecured Creditors has been transmitted to the creditors and equity security holders. The Court concluded after proper Notice of Hearing that the Plan complies

with applicable provisions of the Code and it was confirmed by the Court on March 15, 2004.

Based on the foregoing, I find that the liability of Action Steel Supply, Inc. in this action arising under STAA has been finally discharged by Order of the United States Bankruptcy Court and this matter can now be dismissed. Thomas, et. al. v. Western American Concrete, Case No. 90-STA-16 (ARB July 13, 1992); Toland v. PST Vans, Inc., Case No. 93-STA-29 (Sec'y Sept. 7, 1994).

RECOMMENDED ORDER

It is, therefore, recommended to the Secretary of Labor that the complaint of William O. Kirkpatrick versus Action Steel Supply, Inc., under the STAA, be Dismissed.

Entered this 7th day of March, 2006 at Cincinnati, Ohio.

A

Rudolf L. Jansen
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Decision and Order Dismissing Complaint, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board